SINGAPORE REPORTS.

KEE SENG NEE v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) June 1, 1949]

[Singapore — Magistrate's Appeal No. 36 of 1949]

Criminal Trial — Whether Magistrate can recall prosecution witnesses after close of defence case.

In this case after counsel for the defence had addressed the Court the Magistrate recalled certain prosecution witnesses.

Held, that this was in the circumstances irregular and that the conviction must be quashed as the Magistrate had overcome the doubts which he presumably had before by means which were not open to him.

MAGISTRATE'S APPEAL.

D. G. Osborne-Jones for the Appellant.

A. D. Farrell for the Respondent.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — In this case the appellant was charged as follows :—

> That he on or about the 23rd day of February, 1949, at Jurong Road, Singapore, abetted the commission by one P.C. 888 Mohamed Yusof bin Abdul Samid, a public servant, of the offence of receiving an illegal gratification of two dollars ten cents Singapore currency for forbearing to do an official act to wit effect the arrest of both himself and one Koh Kim Peng for two persons riding on one bicycle, and thereby committed an offence punishable under s. 161 and s. 116 of Chapter 20.

The incident out of which this trouble arose was rather peculiar. The appellant and another man were found both riding the same bicycle. This apparently is an offence for which people can and are arrested.

The prosecution alleged that after being arrested the appellant offered money to a P.C. The appellant denied this. After counsel for the defence had addressed the Court the Magistrate recalled certain prosecution witnesses. This, it was admitted, was in the circumstances irregular. It was contended by the learned Deputy Public Prosecutor that this had not occasioned any miscarriage of justice. I am unable to agree. It is true that the evidence so obtained did not amount to much, but the Magistrate was presumably in some doubt before, and he seems to have overcome his doubt by means which were not open to him.

The appeal must be allowed and the conviction quashed. The sum of $2.10 will be returned to the appellant.

Appeal Allowed.

LOW OI LIN v. REX.

[App. Crim. Juris. (Taylor, J.) June 10, 1949]

[Singapore — Magistrate's Appeal No. 39 of 1949]

Sentence — Factors to be taken in assessing sentence.

It is doubtful whether the principle of one-third of the maximum imprisonment was ever generally applied in the Supreme Court. In assessing sentence all the circumstances of the offence proved should be considered.

Case referred to :—

(1) *Chiah Boon Hean v. Reg.* 1888 S.S. Law Reports p. 49.

MAGISTRATE'S APPEAL.

Eric Choa for the Appellant.

A. D. Farrell for the Respondent.

Cur. Adv. Vult.

Taylor, J. : — The appellant was convicted of assisting in carrying on a Chap Ji Kee lottery, and fined $1,000.00.

The evidence showed that when the house in which she lived was raided, the appellant was in possession of at least one staking slip and that she was a "collector" or minor assistant.

On the question of sentence the learned trial Magistrate states that offences of this type are prevalent and that the policy of the legislation requires substantial fines, both of which are correct. He also finds that the woman in this case was a mere pawn in the organisation which is, of course, a ground for leniency. He then refers to a digest of a case more than sixty years old in which it is stated that sentences of the Supreme Court on first offenders are based on the principle of one-third of the maximum imprisonment prescribed for the offence, *Chiah Boon Hean v. Reg.*[1].

A digest is intended to save time in looking for a case — it is not safe to substitute the summary for the case itself. If the Magistrate had looked at the actual report he would have seen that there was no written judgment and the report does not purport to reproduce the actual words used by the Judges. It is a summary only and it is manifestly unreliable because the decision does not follow the argument. The fine in that case was reduced from the maximum to one half — "all things considered".

That case is not and never was an authority for the proposition stated in the Digest and relied on by the Magistrate. The principles actually applied by the Court were, firstly that no attention should be paid

to a mere allegation that the accused has committed some other offence, of which there is no evidence whatever, and secondly, that in assessing sentence all the circumstances of the offence proved should be considered.

I greatly dislike altering sentences passed by Magistrates especially in cases of this kind which constantly come before them and very rarely before me for which reason they are in a far better position to judge the surrounding circumstances. In this case, however, I am clearly of opinion that the learned Magistrate misdirected himself on a point of law and therefore the fine was assessed, in part, on a wrong principle. If he had not been influenced by the case of *Chiah Boon Hean*[1], I gravely doubt whether he would have made the fine so large, particularly as he expressly found that the woman in this case was only a pawn. Also in another appeal set down (but not heard) on the same day, a different Magistrate had imposed a fine of $1,000.00 in a distinctly more serious case under the same section. I felt therefore that a substantial alteration in this case was necessary and I reduced the fine to $300.00.

I would add that it is very doubtful whether the principle of one-third of the maximum imprisonment was ever generally applied in the Supreme Court; it is more probable that some qualified observation has been distorted by lack of context. However that may be, I can and do most emphatically state from my own experience as Counsel and Judge in this country during many years that the practice of the Supreme Court is quite different and the case mentioned is not now an authority for the so called "one-third rule".

It is impossible to lay down rules for fixing sentences. There are certain factors such as prevalence, difficulty of detection and injury to the public revenue which operate in the direction of severity and others such as leniency to first offenders which operate in the other direction and where, as frequently happens, a number of these factors apply in one case, the Court must balance them as best as it can.

The sentence ought to be an individual one, personal to the prisoner himself, assessed with regard to his moral and financial circumstances as well as to the nature of his offence. It is sometimes necessary to distinguish between two persons who have jointly committed a single offence.

It is desirable that there should be at the back of the mind of the Court something in the nature of a pattern of normal fines for prevalent offences because without this there would be undue disparity in the sentences for more or less similar offences but this pattern should never crystallize into anything approaching a scale or tariff. It is often difficult to decide which of the conflicting factors should prevail but there are two which must be considered in every case — the gravity of the offence and the means of the accused. If authority is desired for this proposition it will be found in Magna Carta.

Fine Reduced.

REX v. LIM KANG CHUI.

[App. Crim. Juris. (Murray-Aynsley, C.J., Evans and Gordon-Smith, JJ.) July 14, 1949]

[Singapore — Special Case No. 6 of 1948]

Criminal Trial — Use of plans in criminal cases.

The question referred to the Court in this case had reference to the use of plans in criminal cases.

Held, (1) that a plan produced in evidence should only show features that are visible to the person making the plan and he should not put in additional features from hearsay as for example the position of a vehicle not in situ or where witnesses are alleged to have been standing; (2) that a key is unobjectionable if it assists identification of features properly on the plan but should not contain anything in addition.

SPECIAL CASE.

A. D. Farrell for the Crown.

Wee Chong Jin — Amicus Curiae.

Cur. Adv. Vult.

The judgment of the Court of Appeal was read by :—

Murray-Aynsley, C. J. : — This case was referred to the Court by Mr. Forrer the Fourth District Judge. The point was academic in the sense that the Court was of opinion that whatever view the Court took of the question referred to it, there was no question but that there was in any case ample evidence on which the accused person, Lim Kang Chui, could be convicted and that the conviction ought to stand.

The question referred to the Court had reference to the use of plans in criminal cases.

There was at the hearing no difference in the views of counsel and as a result there was no argument. We consider that it is advisable to give some direction for the guidance of Courts in the Colony in future.

A plan produced as evidence should only show features that are visible to the person making the plan. He should not put in additional features from hearsay.